



Statutes & Rules

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Arizona State Board of Optometry



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MISSION STATEMENT

The mission of the Optometry Board is to protect the health, safety and welfare of Arizona citizens by regulating and achieving the highest standards in the optometry profession.

DISCLAIMER:

The Arizona State Board of Optometry has published this Statute and Rule Book as an informational service to licensees and stakeholders. The information contained in this publication is merely representative of the official publications for the Arizona Revised Statutes (Legislative) and Arizona Administrative Code (Secretary of State).

Be advised that every effort was made to make the information provided herein accurate and timely; users should understand that errors can occur and the Arizona State Board of Optometry is and will not be responsible for any results of this information not being accurate. When necessary, please rely on the official version of rules, statutes, and/or standards of care.

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Chapter 16

Arizona Revised Statutes

Article 1 - General Provisions

32-1701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of optometry.
2. "Conviction" means a judgment of conviction by any state or federal court of competent jurisdiction in a criminal cause, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.
3. "Licensee" means a person licensed to practice the profession of optometry pursuant to this chapter.
4. "Optometrist" or "doctor of optometry" means a person who has graduated from an accredited college of optometry.
5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa.
6. "Practice of the profession of optometry" means:
 - (a) The examination or refraction of the human eye and its appendages and the employment of any objective or subjective means or methods other than surgery for the purpose of diagnosing or treating any visual, muscular, neurological or anatomical anomalies of the eye.
 - (b) The use of pharmaceutical agents authorized pursuant to this chapter.
 - (c) The use of any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes.
 - (d) The prescribing, fitting or employment of any lens, prism, frame or mountings for the correction or relief of or aid to the visual function, provided that superficial foreign bodies may be removed from the eye and its appendages.
 - (e) The taking of smears of the human eye and its adnexa for culture analysis and the ordering or performing of clinical tests that are appropriate to diagnose, treat, or manage conditions of the human eye and its adnexa and that are limited to those CLIA-waived clinical tests approved pursuant to 42 Code of Federal Regulations section 493.15.
7. "Surgery" means, in reference to the human eye and its appendages, an invasive procedure in which in vivo human tissue is cut, burned, vaporized, removed, coagulated or photodisrupted by use of an electrical cautery, a scalpel, a cryoprobe, a laser, or ionizing radiation. Surgery does not include nonsurgical procedures including the removal of superficial foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

8. "Unprofessional conduct" means:

- (a) Wilful betrayal of a professional secret or wilful violation of a privileged communication except as otherwise required by law.
- (b) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not prohibit a bona fide lease based on the revenues earned by a licensee.
- (c) Addiction to, or illegal use of, narcotic drugs or use of intoxicating beverages to excess or practicing or attempting to practice the profession of optometry while under the influence of intoxicating beverages or narcotic drugs.
- (d) Impersonating another licensee.
- (e) Knowingly having professional connection with or lending one's name to a person who is not a licensee.
- (f) Gross negligence, repeated or continuing acts of negligence or incompetence in the practice of optometry.
- (g) Any conduct or practice, including incompetency, that constitutes a danger to the health, welfare or safety of patients or the public.
- (h) Prescribing, dispensing or pretending to use any secret means, methods, device or instrumentality.
- (i) Refusing to divulge to the board on demand the means, methods, device or instrumentality used for optometric examination or therapy.
- (j) Representing that a manifestly not correctable condition can be permanently corrected or that a correctable condition can be corrected within a stated time if this is not accurate.
- (k) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of the profession of optometry.
- (l) Failing to comply with a board order or consent agreement.
- (m) Fraud, forgery, unsworn falsification, false swearing or perjury involving a matter before the board or a written instrument submitted to the board.
- (n) Wilfully and without legal justification failing to furnish in a timely manner information that is necessary for the board to conduct an investigation under this chapter and that has been requested or subpoenaed by the board.
- (o) Conduct that discredits the profession.
- (p) Sexual intimacies with a patient in the course of care or treatment.
- (q) Falsely claiming attendance at a required continuing education course.

32-1702. Board of optometry; appointment; qualifications; term; removal

- A. The state board of optometry is established consisting of the following members who are appointed by the governor to staggered four-year terms that end on July 1:
 - 1. Five members who have been licensed and engaged in the active practice of optometry in this state for at least three years immediately before the appointment.
 - 2. One public member who does not have a direct or indirect interest in the practice of optometry, opticianry or medicine.
 - 3. One member who is a physician licensed pursuant to chapter 13 or 17 of this title.
- B. The governor may remove any professional member for incompetency or unprofessional conduct or if the member's license has been revoked or suspended or if the member has been censured or placed on probation. The governor may remove any member for neglect of duty or improper conduct. The unexcused absence of a member for more than two consecutive meetings is justification for removal. Appointment by the governor to fill a vacancy caused other than by expiration of a term is for the unexpired portion of the term.
- C. A member of the board is ineligible to serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this subsection.
- D. The board shall conduct regular meetings at least six times each year at times and places designated by the board or the governor. Special meetings may be called that the president determines are necessary to carry out the functions of the board, including meetings using communications equipment that allows all members participating in the meetings to hear each other.
- E. A majority of the members of the board constitutes a quorum and a majority vote of a quorum present at any meeting governs all actions taken by the board.

32-1703. Organization of board; compensation; immunity

- A. The board shall annually elect from its members a president who shall be chief presiding officer of the board and such other officers as it deems appropriate and necessary to conduct its business. The board shall assign such duties as it deems appropriate to such other officers as it elects.
- B. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent in the performance of their duties.
- C. Members of the board, its agents and employees and members of advisory committees are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-1704. Powers and duties of the board

- A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.

- B. The board may not adopt a rule that:
1. Regulates a licensee's fees or charges to a patient.
 2. Regulates the place in which a licensee may practice.
 3. Prescribes the manner or method of accounting, billing or collection of fees.
 4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.
- C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.
- D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.
- E. The board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.
- F. The board may hire or contract with investigators to assist in the investigation of violations of this chapter, hire other employees required to carry out this chapter and contract with other state agencies when required to carry out this chapter.
- G. The board may:
1. Appoint advisory committees.
 2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
 3. Charge reasonable fees for materials it has printed at its own expense.
 4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.
- H. The board may hire consultants and professional and clerical personnel as required to perform its duties.
- I. The board may contract with other state or federal agencies as required to carry out this chapter.
- J. Subject to the limitations of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.
- K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the action by personal delivery or certified mail

to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.

32-1705. Board of optometry fund

- A. A board of optometry fund is established.
- B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of monies from whatever source which come into the possession of the board in the state general fund and deposit the remaining ninety per cent in the board of optometry fund.
- C. Monies deposited in the board of optometry fund are subject to section 35- 143.01.

32-1706. Use of pharmaceutical agents

- A. A licensee may prescribe, dispense and administer over-the-counter pharmaceuticals and topical prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728.
- B. A licensee may prescribe, dispense and administer the following oral prescription pharmaceuticals subject to the pharmaceutical agent classifications specified in section 32-1728:
 - 1. Antibiotics classified as tetracycline and its derivatives, cephalosporins, penicillin and its derivatives and macrolides and antivirals for the treatment of diseases of the eye and its adnexa. A licensee may prescribe these antibiotics and antivirals for any one patient for each occurrence for a period not more than the day limit recommended by the manufacturer or by the physicians' desk reference. If the patient's condition is other than blepharitis and does not improve during the first seventy-two hours of treatment by means of an oral antibiotic or an oral antiviral, the licensee shall consult with the patient's primary care physician or other family physician for the purpose of referral of the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. After the referral has been made, the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. If the treatment is by oral antibiotics for blepharitis and if the patient's condition does not improve during the first ten days of treatment, the licensee shall request the patient's primary care physician or other family physician to refer the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. On notification of the referral the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. If the condition is not resolved at the end of the normal treatment period, the licensee shall request the patient's primary care physician or other family physician to refer the patient to a physician who specializes in ophthalmology, infectious diseases, internal medicine or neurology. On notification of the referral the licensee shall consult with the specialist. The licensee shall note the consultation in the patient's file. A licensee shall not prescribe, dispense or administer an oral antibiotic or an oral antiviral to a person who is under six years of age. For the purposes of this paragraph, "physician" means a person who is licensed pursuant to chapter 13 or 17 of this title.
 - 2. Antihistamines. A licensee may prescribe an antihistamine for not more than seven days for any one patient for each occurrence. If the patient's condition does not improve during the first seven days of treatment, the licensee shall refer the patient to the patient's primary care physician or other physician licensed pursuant to chapter 13 or 17 of this title.

3. Nonsteroidal anti-inflammatory agents. A licensee may prescribe a nonsteroidal anti-inflammatory agent for not more than fourteen days for any one patient for each occurrence. A licensee shall not prescribe, dispense or administer a nonsteroidal anti-inflammatory agent to a person who is under six years of age.
- C. A licensee may prescribe, dispense and administer a schedule III controlled substance only if it is an analgesic.
- D. A licensee shall not prescribe, dispense or administer the following prescription substances:
 1. An oral steroid.
 2. An oral antifungal.
 3. An oral carbonic anhydrase inhibitor.
 4. An oral antimetabolite.
 5. An oral immunosuppressive.
 6. A substance administered intravenously.
 7. Except as provided in subsection E of this section, substances administered by injection.
 8. A schedule I, II, IV or V controlled substance.
 9. An oral agent for the treatment of closed angle glaucoma attack.
- E. A licensee may use epinephrine auto-injectors to counteract an anaphylactic reaction. A licensee who uses auto-injectors may order and maintain anaphylactic-related supplies. The board shall require a licensee to maintain in the licensee's office medically necessary supportive equipment and supplies that are used in connection with the treatment of an anaphylactic reaction, including oxygen equipment, airway maintenance equipment or other necessary equipment consistent with the prevailing standard of care as specified by the board.

Article 2 – Licensing

32-1721. Persons and acts not affected by this chapter

This chapter does not apply to:

1. Physicians and surgeons duly licensed to practice medicine and surgery in this state, if they are practicing lawfully.
2. Dispensing opticians duly licensed to practice, if they are practicing lawfully in accordance with the provisions of section 32-1671.
3. The sale of complete ready-to-wear eyeglasses as merchandise from a permanently established place of business.
4. A licensed or unlicensed individual performing duties delegated under the authority of a licensee.

32-1722. Qualifications of applicant; applications

- A. A person of good moral character who wishes to engage in the practice of the profession of optometry shall file with the board a verified application with the required application fee that includes:
 1. The applicant's name, age and address.
 2. Documentation of graduation from a university or college that teaches the profession of optometry and that is accredited by a nationally accepted accrediting body on optometric education.

3. Documentation of satisfactory completion of an equivalent course of study that is approved by the board in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa and that either:
 - (a) Meets the contemporary educational requirements at colleges of optometry in the United States.
 - (b) Totals at least one hundred twenty hours.
 4. Documentation of the successful passage of a written examination as prescribed by the board.
 5. Background information on a form prescribed by the attorney general for the purpose of conducting an investigation into the existence of prior arrests and convictions.
 6. Disclosure of any investigation conducted or pending by an optometric regulatory board in another jurisdiction in the United States.
- B. On receipt of an application in proper form and containing the information prescribed in subsection A of this section, the board may investigate the applicant's character, ability and experience.
- C. For the purposes of an investigation that is conducted pursuant to subsection B of this section, the board may subpoena witnesses, administer oaths and take testimony with respect to the character of the applicant or to any matter affecting the application at a hearing held after sufficient notice has been given.
- D. If the board finds that the applicant has passed the examination provided for under section 32-1724 and that the applicant's character, ability and experience are satisfactory, the board shall issue a license.

32-1723. Licensure by endorsement

The board shall waive the written examination requirements of this chapter if all of the following are true:

1. The applicant submits a license or a certified copy of a license to practice optometry issued by the regulatory board of another jurisdiction of the United States that has licensure requirements that the board determines meet or exceed the requirements of this chapter.
2. The license of the applicant has not been suspended or revoked by any other licensing jurisdiction of the United States for any cause that is a ground for suspension or revocation of a license under this chapter.
3. The applicant has been engaged in the practice of the profession of optometry continuously in the other licensing jurisdiction or in a United States military branch of service for not less than four of the five years immediately preceding the application.
4. The information provided by national data banks designated by the board has successfully verified the applicant.
5. The applicant meets the requirements of section 32-1722 concerning good moral character.

32-1724. Examination of applicants; time of examination

- A. Licensing examinations shall be conducted and graded according to rules prescribed by the board. The board shall not grade examinations on a curve.

- B. The board may give applicants a written examination on subjects currently being taught in universities or colleges of optometry as well as on this state's statutes and rules relating to the practice of optometry. In lieu of its written examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that an applicant has passed board designated parts of the national board's examination. To receive a passing grade on a written examination administered by the board, an applicant shall receive a grade of not less than seventy-five per cent on the whole written examination and not less than fifty per cent in any one subject.
- C. The board may give applicants a practical examination on subjects currently being taught in universities or colleges of optometry and shall give an examination on this state's statutes and rules relating to optometry. In lieu of its practical examination for licensure, the board may accept documentation from the national board of examiners in optometry that shows that the applicant has passed board designated parts of the national board's examination. To receive a passing grade on a practical examination, an applicant shall receive a grade of not less than seventy-five per cent.
- D. Examinations shall be held at least once each year. Notice of examinations shall be given not less than sixty days before the date of examination. The board shall adopt rules to establish conditions under which an applicant who is unable to take the examination and who notifies the board before the date fixed for the examination may take the next examination.

32-1725. Issuance of license

The board shall issue to each applicant who satisfactorily passes the examination and who pays the license issuance fee pursuant to section 32-1727 a license under the seal and signatures of the members of the board. An applicant who does not pay the issuance fee within sixty days must submit a new application and all applicable fees pursuant to section 32-1727.

32-1726. Renewal of license; continuing education; failure to renew

- A. Beginning on September 1, 2001, a licensee who wishes to renew a license must do so every other year on or before the licensee's birthday by submitting a completed renewal form and the renewal fee prescribed by the board. A licensee who does not renew a license within thirty days after the licensee's birthday must also pay a late fee as prescribed by the board. A license expires if the licensee does not renew the license within four months after the licensee's birthday. A person who practices optometry in this state after that person's license has expired is in violation of this chapter.
- B. As a condition of renewal or reinstatement each licensee shall complete thirty-two hours of continuing education as prescribed by the board. The board shall require continuing education on the subject of pharmaceutical use for doctors who are authorized by the board to prescribe, dispense, and administer pharmaceuticals. The board may waive or adjust the continuing education requirements for good cause shown.
- C. To reinstate an expired license a person must submit a written application and pay all delinquent biennial fees, all late fees and a fifty dollar penalty fee for each year the license remains unrenewed. The board shall not require the applicant to pass an initial licensing examination if the applicant meets the requirements of this subsection within five years after the license expired.
- D. A person holding a license to practice the profession of optometry in this state who has not engaged in the practice of the profession of optometry within a five year period shall pass an initial licensing examination before the license is renewed.

32-1727. Fees

A. The following fees shall be paid to the board:

1. Filing an application for examination, one hundred fifty dollars.
2. License issuance fee as established by the board.
3. Renewal of a license to practice the profession of optometry as established by the board.
4. Late renewal of a license as established by the board.
5. Application for a license by endorsement, three hundred dollars.
6. Duplicate license fee, thirty dollars.
7. Certificates of special qualification, twenty dollars.
8. Duplicate certificates of special qualification, twenty dollars.
9. Optometry statute pamphlet fee, five dollars.

B. Fees are not refundable.

32-1728. Pharmaceutical agents; certification; use; course of study

- A. A licensee initially licensed after the effective date of the amendment to this section, a licensee licensed by endorsement after the effective date of the amendment to this section or a licensee who passed an examination conducted by the board for the use of oral pharmaceutical agents before the effective date of the amendment to this section may prescribe, dispense and administer a pharmaceutical agent subject to the limitations provided in this chapter.
- B. The board may reissue a certificate for renewal for the use of pharmaceutical agents for topical diagnostic or topical therapeutic pharmaceutical agents, or both, to a person who holds an existing certificate issued on or before the effective date of the amendment to this section and who pays the certificate of special qualification fee prescribed in section 32-1727. The certificate may specify the following:
1. Use of no drugs.
 2. Use of topical diagnostic agents.
 3. Use of topical diagnostic and therapeutic agents.
- C. The board may issue a certificate of special qualification to practice optometry without the use of pharmaceutical agents to a person who holds a current license as of July 1, 2000 and who pays the certificate of special qualification fee prescribed in section 32-1727.
- D. The board shall adopt a course of study for certification to use oral pharmaceuticals after consultation with colleges of optometry accredited by a nationally accepted accrediting body on optometric education and with the college of pharmacy at the University of Arizona. The board shall design and implement the course in a manner that requires a licensee who wishes to have the privilege of dispensing, prescribing and administering topical and oral pharmaceutical agents pursuant to this chapter meet the contemporary educational requirements related to pharmaceuticals authorized for licensees pursuant to this chapter at colleges of optometry in the United States and to demonstrate competence in dispensing, prescribing and administering those topical or oral pharmaceutical agents by passing examinations in

those areas commensurate with doctoral candidates in colleges of optometry in the United States. The course of study shall teach and certify competence in the prescription and administration of topical or oral pharmaceutical agents pursuant to this chapter. The board shall adopt the course of study and completion requirements to reflect the current course of study and demonstrated competence level of pharmacy programs in colleges of optometry in the United States. The board may offer a course and examination that otherwise meets the requirements of this subsection and that is limited to oral pharmaceuticals for licensees who hold a valid diagnostic and therapeutic topical pharmaceutical permit issued pursuant to subsection A of this section.

- E. The board shall adopt a uniform prescription form for use by all licensees who have the privilege to prescribe, dispense and administer topical pharmaceuticals or oral pharmaceuticals. The prescription form shall indicate the prescribing authority of the licensees and whether the authority includes oral pharmaceuticals, topical pharmaceuticals or both oral pharmaceuticals and topical pharmaceuticals. The form shall include the name, address, telephone number, fax number and professional license number of the licensee.
- F. Annually on or before January 1 the state board of optometry shall mail to the Arizona state board of pharmacy the list of all licensees who have been certified to prescribe, dispense and administer either oral pharmaceuticals or topical pharmaceuticals, or both. Within thirty days of any additional certification by the state board of optometry, the state board of optometry shall provide updated lists to the Arizona state board of pharmacy. At the same time the state board of optometry shall send the list to each licensed pharmacy in Arizona, excluding hospital pharmacies, long-term care pharmacies and infusion pharmacies.

32-1730. Fingerprinting

- A. Each applicant for licensure and license reinstatement pursuant to this chapter shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- B. If the board does not have any evidence or reasonable suspicion that the applicant has a criminal history, the board may issue a license before it receives the results of a criminal records check.
- C. The board shall suspend a license of a person who submits an unreadable set of fingerprints and does not submit a new readable set of fingerprints within twenty days after being notified by the board to do so.
- D. This section does not affect the board's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

Article 3 - Regulation

32-1741. Practicing optometry without a license prohibited

It is unlawful for a person to practice the profession of optometry or to hold himself out to be or assume or attempt to act as a doctor of optometry without a valid license to practice the profession of optometry.

32-1742. Registering with board; public registry file; current information

- A. Each licensee shall provide the board in writing the addresses of all permanent and extended temporary locations in which the licensee practices and the licensee's office telephone numbers, mailing address and residence address. Any notice required to be given by the board to a licensee shall be sent by mail to the licensee's most current mailing address shown on the records of the board. The board may attempt to give or serve notice at any other address or location on file with the board if service to the mailing address is unsuccessful. Service of a required notice is complete on the date of mailing to the licensee's mailing address.
- B. The board shall maintain a current registry of each licensee's name, office locations and mailing address. The registry is open to the public.
- C. Each licensee shall give written notice to the board within ten days following each change in the licensee's residence address, mailing address, office location or office telephone number.

32-1743. Grounds for censure, civil penalty, probation, suspension, revocation, denial or renewal of license

After notice and a hearing the board in its discretion may censure, impose a civil penalty, prescribe probation, suspend or revoke the license of a doctor of optometry or refuse to issue or renew a license, certificate or registration for any of the following reasons:

- 1. Conviction of a felony or any offense involving moral turpitude.
- 2. Procuring or attempting to procure a license to practice optometry or a certificate to use pharmaceutical agents by fraud, deceit, misrepresentation or knowingly taking advantage of the mistake of another person or agency.
- 3. Conduct likely to deceive or defraud the public.
- 4. Unprofessional conduct.
- 5. Employment of a solicitor to solicit business or soliciting from house to house or person to person.
- 6. Obtaining a fee or compensation by fraud or misrepresentation.
- 7. Employment of a person to engage in the practice of the profession of optometry who does not hold a license to practice the profession of optometry in this state.
- 8. Using any device to evade or defeat the provisions of this chapter, such as a profit sharing plan or partnership with a person not licensed to practice the profession of optometry in this state.
- 9. The practice of the profession of optometry under a false or assumed name.
- 10. Violation of any provision of this chapter.
- 11. Violation of any of the rules adopted by the board pursuant to this chapter.
- 12. Any violation of any statutes, laws or rules regulating the practice of optometry in this state or any other jurisdiction in the United States.

13. Providing any controlled substance or pharmaceutical agent not authorized by this chapter or providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes for diagnosis and treatment of conditions of the human eye and its adnexa.
14. Gross malpractice or repeated acts constituting malpractice.
15. Failing to maintain or submit records as required by this chapter.

32-1744. Board investigations; duty to report violations; hearing; decision of board; informal settlement conference

- A. The board on its own motion shall investigate any evidence that appears to show that a licensee may be guilty of a violation of section 32-1743. Any person may report to the board information the person may have that appears to show that a licensee may be guilty of unprofessional conduct or of practice without regard for the safety and welfare of the public. A person who reports or provides information to the board in good faith is not subject to civil damages as a result, and the name of the person reporting shall not be disclosed unless the information is necessary to conduct an investigation or is essential to disciplinary proceedings conducted pursuant to this section.
- B. The board, its designee or the executive director shall require a licensee to provide a written response to a complaint within twenty days after the licensee receives the notification of complaint.
- C. Except as provided in subsection E of this section, if in the opinion of the board it appears that information provided under subsection A of this section may be accurate and a violation of this chapter, the board shall request an informal interview with the licensee before proceeding to a formal hearing. If the licensee refuses an invitation for an informal interview, or if the licensee accepts the invitation and if the results of the interview indicate suspension or revocation of license may be in order, a complaint shall be issued and a formal hearing held pursuant to title 41, chapter 6, article 10. If at the informal interview the board finds the information provided under subsection A of this section is accurate but not of sufficient seriousness to merit suspension exceeding thirty days or revocation of the license, it may take any or all of the following actions:
 1. Issue a decree of censure or written reprimand.
 2. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. Probation may include a requirement for a refund of fees and charges to professional services clients resulting from services performed in violation of this chapter or rules adopted pursuant to this chapter, restriction of a license to practice or temporary suspension not to exceed thirty days. Failure to comply with probation is cause for filing a complaint and holding a formal hearing pursuant to title 41, chapter 6, article 10.
 3. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter.
 4. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- D. If the board determines that a reasonable basis exists to believe that a violation of this chapter or rules adopted pursuant to this chapter has occurred and the violation is not sufficiently serious to warrant disciplinary action, it may send a letter of concern to the licensee. The letter of concern shall advise the

licensee of the possible violation and the board's decision not to initiate proceedings. If violations occur after the board sends a letter of concern, the board may initiate proceedings on all violations, including the violation that was the subject of the letter of concern.

- E. If in the opinion of the board it appears that information provided under subsection A of this section may be accurate, the board may issue a complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10 without first holding an informal interview if the probable violation involves one or more of the following:
1. Gross negligence.
 2. Fraud, forgery, unsworn falsification, false swearing or perjury.
 3. Three or more repeated offenses.
 4. Conviction of a felony.
 5. Conviction of an offense involving moral turpitude.
 6. Incompetence.
 7. Failing to comply with a board order or consent agreement.
 8. Wilfully and without legal justification failing to furnish in a timely manner information necessary for the board to conduct an investigation under this chapter that has been requested or subpoenaed by the board.
- F. The board shall serve on the licensee a notice fully setting forth the conduct or inability concerned and returnable at a hearing to be held before the board or an administrative law judge in not less than thirty days, stating the time and place of the hearing.
- G. The board may require a mental and physical examination and make an investigation, including, if necessary, the issuance of subpoenas, the appointment of advisory committees, the employment of expert witnesses, the taking of depositions or otherwise, as may be required fully to inform itself with respect to the complaint.
- H. A person may file a motion with the board for an expedited hearing pursuant to section 41-1092.05.
- I. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the summons and complaint.
- J. At the hearing held in compliance with subsection F of this section, a licensee may be present in person together with any counsel and witnesses the licensee chooses.
- K. The board shall issue subpoenas for witnesses it may need and, at the respondent's expense, for witnesses the respondent may request. All provisions of law compelling a person under subpoena to testify are applicable to a hearing held pursuant to this section.

- L. The board shall serve every notice or decision under this article by any method reasonably calculated to effect actual notice on the board and every other party to the action to the party's last address of record with the board. Each party shall inform the board of any change of address within five days after the change.
- M. A licensee who, after a hearing, is found to be guilty by the board of a violation of this chapter is subject to censure, probation or civil penalty as provided in subsection C of this section, suspension of license or revocation of license, or any combination of these, and for the period of time or permanently and under the conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of formal hearings to the licensee who is in violation of this chapter.
- N. The board shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The board shall serve a copy of the decision on the licensee. On the licensee's request, the board shall also transmit to the licensee the record of the hearing.
- O. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they are related to resolved complaints and comply with subsection A of this section:
1. The complaint.
 2. The response and any rebuttal statements submitted by the licensee.
 3. Written or recorded board discussions of the complaint.
 4. Written reports of an investigation of a complaint.
 5. Disposition of the complaint, including any written comments of the board.
- P. This section or any other law making communications between a licensee and the licensee's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.
- Q. Any action of the board shall be included in the minutes of the meeting at which the action is taken, including any determination by the board not to proceed under this section. The person reporting information to the board shall receive a copy of any final decision.
- R. Pursuant to sections 35-146 and 35-147, the board shall deposit civil penalties collected pursuant to this chapter in the state general fund.
- S. A licensee who is the subject of a disciplinary action may request an informal settlement conference. The licensee must submit a request for an informal settlement conference to the board in writing. The board shall hold an informal settlement conference within fifteen days after it receives a request to do so from the licensee. Only a person with the authority to act on behalf of the board may represent the board at the informal settlement conference. The board representative shall notify the licensee in writing that any written or oral statement made by the licensee at the informal settlement conference, including

statements for the purpose of settlement negotiations, is inadmissible in any subsequent hearing. A licensee who participates in an informal settlement conference waives the right to object to the participation of the board representative in the final administrative decision.

32-1745. Prehearing conferences; orders

- A. On the written request of a licensee, the board may schedule a prehearing conference at least ten days before the hearing date scheduled pursuant to section 32-1744. The board shall notify the licensee who requested a prehearing conference of its decision within five business days. If the board agrees to hold a prehearing conference the notification shall include the date, time and place of the conference.
- B. To promote the orderly and prompt conduct of the hearing, the board may use a prehearing conference for the purposes prescribed in section 41-1092.05, subsection F and for any other matter related to the hearing.
- C. The board may conduct all or part of the prehearing conference by electronic means if each party in the prehearing conference can hear and has an opportunity to participate during the entire conference.
- D. After a prehearing conference and before the hearing, the board shall enter an order verbally on the record or in writing. The order shall state the stipulations and admissions made, actions taken and other matters resolved. The board shall modify this order only to prevent manifest injustice, as determined by the board.
- E. Whether or not a prehearing conference is held, the board may issue an order to regulate the conduct of the hearing and to limit the issues to those raised in the pleadings.

32-1746. Records; maintenance; confidentiality

- A. A licensee must allow the board to inspect patient records during normal business hours. Before a licensee may change the location of patient records, the licensee must file a signed statement with the board that discloses the new address where the licensee will maintain the records.
- B. All patient records, examination materials, records of examination grading and performance and transcripts of educational institutions concerning applicants and licensees are confidential and are not public records.

32-1747. Right to examine and copy evidence

In connection with the investigation by the board on its own motion or as the result of information received pursuant to section 32-1744, the board or its duly authorized agents or employees may examine and copy during normal business hours any documents, reports, records or other physical evidence of any person being investigated, or the reports, the records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or other public or private agency, and any health care institution as defined in section 36-401, if the documents, reports, records or evidence relates to competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice the profession of optometry.

32-1748. Reinstatement; definition

- A. On written application and for good cause shown, the board may issue a new license to a doctor of optometry whose license has been revoked, reissue a license or modify the suspension of any license to practice optometry which has been suspended.
- B. A person applying for reinstatement of a revoked license shall, in addition to the requirements of this section, comply with all initial licensing requirements in existence at the time of his application for reinstatement, except those requirements which are inconsistent with this section.
- C. The board shall not issue a new license or reissue a license to a doctor of optometry whose license has been revoked until two years after the effective date of the revocation, except that if the revocation is based only on section 32-1743, paragraph 1 and the conviction is ultimately reversed on appeal, the board shall enter an order vacating the revocation.
- D. For the purposes of this section, "good cause shown" means that the person making application for reinstatement or reissuance shall demonstrate through substantial evidence presented to the board that he is completely rehabilitated with respect to the conduct which was the basis of the revocation or suspension of his license. Demonstration of rehabilitation shall include:
 - 1. Evidence that the person has not engaged in any conduct during the revocation or suspension period which, if he had been licensed during that period, would have constituted a basis for revocation or suspension pursuant to section 32-1743.
 - 2. Evidence that, with respect to any criminal conviction which constituted any part of the basis for the previous revocation or suspension, his civil rights have been fully restored pursuant to statute or other applicable recognized judicial or gubernatorial order.
 - 3. Evidence that restitution has been made to any aggrieved party as ordered by a court of competent jurisdiction.
 - 4. Other evidence of rehabilitation the board deems appropriate.

32-1749. Judicial review and appeal

- A. A doctor of optometry aggrieved by a final decision of the board in a disciplinary proceeding conducted pursuant to section 32-1744 is entitled to judicial review.
- B. Such person may institute proceedings for review by filing a verified petition in the superior court in Maricopa County within thirty days after service of the final decision of the board. A copy of the petition shall be served upon the board.
- C. Within thirty days after service of the petition, or within such further time as the court allows, the board shall transmit to the court the original or a certified copy of the board's entire proceedings under review, but by stipulation of the parties the record may be shortened.
- D. If, before the date set for hearing, application is made to the court for leave to present supplemental evidence on the issues in the action, and it is shown to the satisfaction of the court that supplemental evidence is material and that there were good reasons for failure to present it in the proceeding before the board, the court may order that supplemental evidence be taken before the board upon conditions the court deems proper. The board may modify its findings and decision by reason of such supplemental

evidence and shall file with the reviewing court, to become a part of the record, the original or a certified copy of such supplemental proceedings together with any modification or change in its findings or decision as the result thereof.

- E. The review shall be conducted by the court without a jury and shall be confined to the record, except that the court may take testimony and receive evidence with respect to alleged irregularities in procedure before the board not shown in the record. The court, upon request, shall hear oral argument and receive written briefs.
- F. The court may affirm the decision of the board or remand the case for further proceedings or it may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the decision is contrary to law or is without or in excess of the jurisdiction of the board or is arbitrary and capricious in that it is unsupported by substantial evidence.
- G. The petitioner or the board may secure a review of any final judgment of the superior court. Such appeal shall be taken in the manner required by law for appeals from the superior court in other civil cases.
- H. The board, upon application, or the superior court, on such terms and conditions as may appear proper, may stay the order of the board, in whole or in part, during the pendency of a review by the superior court and any appeal, upon a clear and convincing showing by the petitioner and after a full evidentiary hearing that such stay would not constitute a threat to the public health, welfare or safety and that failure to grant the stay would work a substantial injustice on the petitioner.

32-1750. Allegations sufficient to charge violation

In charging a person in a complaint for an injunction or in an affidavit, information or indictment with a violation of this chapter by practicing the profession of optometry without a license, it is sufficient to charge that he did upon a certain day and in a certain county engage in the practice of the profession of optometry, not having a valid license to do so, without averring any more particular facts concerning the act.

32-1751. Cease and desist orders; injunctive relief

- A. In addition to all other remedies, if after conducting an investigation, either on complaint or otherwise, and for good cause shown it appears to the board that any person has engaged in or is engaging in an act, practice or transaction that violates this chapter or any rule or order of the board, the board may do either of the following:
 - 1. Serve on the person by certified mail or personal service a cease and desist order requiring the person to cease and desist immediately, on receipt of the notice, from engaging in the act, practice or transaction. If the board issues a cease and desist order it shall conduct a hearing within thirty days to determine whether the order should be continued or eliminated and to determine whether the board should take other appropriate action.
 - 2. Through the attorney general or the county attorney of the county in which the violation is alleged to have occurred apply to the superior court in that county for an injunction restraining that person from engaging in the violation.
- B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the board to post a bond.
- C. Service of process may be on the defendant in any county of this state where the defendant is found.

- D. Violation of an injunction is punishable as contempt of court.
- E. An injunction does not relieve a person practicing the profession of optometry without a license from criminal prosecution but is in addition to any remedy provided for the criminal prosecution.

32-1752. Violation; classification

A person who practices the profession of optometry without at the time having a valid license to practice, or who files or attempts to file with the board of optometry practice locations under a license issued to another, claiming to be the person entitled to practice under such license, is guilty of a class 2 misdemeanor.

32-1753. Practice designations; definition

- A. A licensee must practice the profession of optometry only as either:
 - 1. A sole practitioner.
 - 2. A partner with other health professionals.
 - 3. A professional limited liability company in which health professionals collectively possess at least fifty-one per cent of the ownership interest.
 - 4. A professional corporation in which health professionals collectively possess at least fifty-one per cent of the ownership interest.
 - 5. An employee or independent contractor in any of the categories listed in this subsection.
- B. A licensee must practice only under the name under which the licensee is registered with the board, which may include a trade name.
- C. For purposes of this section, "health professional" means a currently licensed member of the health professions as defined in section 32-3101.

Article 4 – Referral

32-1761. Referral of patient to licensed physician required on finding of certain symptomatic conditions

An optometrist licensed pursuant to this chapter and providing service to any person shall refer such person to a physician licensed pursuant to chapter 13 or 17 of this title when such optometrist finds an indication of the presence of a disease or condition of the eye requiring treatment outside the scope of practice of the profession of optometry as defined in section 32-1701.

Article 5 – Non-resident Dispensers of Replacement Soft Contact Lenses

32-1771. Definitions

For purposes of this article, except as the context otherwise requires:

- 1. "Nonresident dispenser" means a person not domiciled in this state who is licensed in the person's state of domicile to dispense replacement soft contact lenses and who dispenses replacement contact lenses to patients in this state.

2. "Qualified dispenser" means a nonresident dispenser holding a current registration with the board.
3. "Replacement soft contact lenses" means hydrophilic lenses requiring no fitting or adjustments that are dispensed as packaged and sealed by the manufacturer.

32-1772. Exemptions

This article does not apply to:

1. Physicians licensed under chapter 13 or 17 of this title.
2. Doctors of optometry licensed under chapter 16 of this title.
3. Dispensing opticians licensed under chapter 15.1 of this title.
4. A pharmacist and a pharmacy licensed under chapter 18 of this title.

32-1773. Registration of nonresident dispensers; qualifications; fee

- A. A nonresident dispenser may register with the board to dispense replacement soft contact lenses. Registration shall be effective for two years and subject to renewal.
- B. The board shall set a fee for registration and for renewal of registration.
- C. Applicants for registration or renewal shall provide to the board at the time for registration or renewal on a form prescribed by the board their name, address, name of principal corporate officers, if any, and name of all general partners, if any. The registration shall be accompanied by the required fee and a certified copy of the applicant's license from the licensing authority in their state of domicile and other information the board requires.
- D. Registered dispensers shall submit a report to the board within thirty days of the change of its address, any officer, partner or pharmacist or of the status of its license in the state of domicile.
- E. Registered dispensers shall maintain at all times a valid unexpired license, permit or registration to conduct the business of a pharmacist or pharmacy in their state of domicile.
- F. The board may suspend, revoke or refuse to renew the registration of a registered dispenser or impose a civil sanction against a registered dispenser or any other person who:
 1. Violates this article.
 2. Obtained a registration by fraudulent or other material misrepresentation.
 3. Has been convicted of a felony.
 4. Has had their license suspended or revoked in any other jurisdiction.
 5. Violates any other Arizona or federal law regulating the dispensing of replacement contact lenses.
 6. Commits an offense in another jurisdiction which would be grounds for revocation or suspension in this jurisdiction.

- G. The board shall issue a complaint to the registrant and set a hearing, which shall conform to the requirements of title 41, chapter 6.

32-1774. Dispensing replacement soft contact lenses by qualified dispensers; prescriptions; filling

- A. A nonresident dispenser may not fill a prescription for replacement soft contact lenses without first having registered with the board. A qualified dispenser may fill a prescription for replacement soft contact lenses only as provided in this section.
- B. A qualified dispenser may fill a prescription for replacement soft contact lenses that meets all of the following requirements:
1. Conforms to state and federal statutes and regulations governing those prescriptions and includes the name, office address, signature and state license number of the prescribing physician or optometrist.
 2. Explicitly states the date of issuance.
 3. Explicitly states that the prescription is for contact lenses and includes the lens brand name, type, tint and all other specifications necessary to accurately dispense the prescription.
- C. The qualified dispenser shall fill the prescription with the exact lenses prescribed and no substitutions shall be made. The expiration date of the prescription shall be the earlier of the expiration date provided by the prescribing physician or optometrist or one year after the date of issuance. The qualified dispenser shall fill a refill of a prescription that is within sixty days of its expiration date with no more than the sufficient quantity of replacement soft contact lenses needed through the expiration date. The qualified dispenser shall ensure that prescriptions are filled accurately.
- D. The qualified dispenser shall provide the following or substantially equivalent written notification to the patient whenever contact lenses are supplied: Warning: If you are having any unexplained eye discomfort, watering, vision change or redness, remove your lenses immediately and consult your eye care practitioner before wearing your lenses again.
- E. Any advertisement by a qualified dispenser for replacement soft contact lenses shall include all fees, charges and costs associated with the purchase of replacement soft contact lenses from the qualified dispenser.
- F. During its regular hours of operation, but at least six days per week and for at least forty hours per week, a qualified nonresident dispenser shall maintain a toll free telephone service to facilitate communication between patients in this state and a registered dispenser who has access to the patient's records. This toll free number shall be disclosed on a label affixed to each container of replacement soft contact lenses dispensed to patients in this state.
- G. Qualified dispensers shall maintain records of replacement soft contact lenses dispensed to patients in this state separate from records for patients in other states such that the records for patients in this state are readily retrievable. Records shall be maintained for a period of at least three years. Records shall be available for inspection at the board's request.

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

In addition to the definitions in A.R.S. §§32-1701 and 32-1771, the following apply to this Chapter:

“Accredited” means approved by the ACOE.

“ACOE” means the Accreditation Council on Optometric Education.

“Advertisement” means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

“Applicant” means:

An individual who applies to the Board under A.R.S. §§32-1722 or 32-1723 for a license to practice the profession of optometry, but has not been granted the license;

A licensee who applies under R4-21-205 for license renewal;

A licensee who applies under R4-21-208 for a pharmaceutical agents number;

A licensee or provider of continuing education that applies for approval of a continuing education under R4-21-210; or

A person who applies to the Board under A.R.S. § 32-1774 and R4-21-213 for registration as a non-resident dispenser of replacement soft contact lenses.

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Approved continuing education” means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

“Certificate of special qualification” means a document that specifies whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may prescribe, administer, and dispense a pharmaceutical agent and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

“Course of study,” as used in A.R.S. §32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.

“Epinephrine auto-injector” means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded syringe.

“Good cause” means a reason that is substantial enough to afford a legal excuse.

“Incompetence,” as used in A.R.S. §32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.

“Low vision” means chronic impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.

“Low-vision rehabilitation” means use of optical and non-optical devices, adaptive techniques, and community resources to assist an individual to compensate for low vision in performing daily routine activities.

“Negligence,” as used in A.R.S. § 32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.

“Oral pharmaceutical agent,” as used in A.R.S. §32-1728, means an ingested prescription or non-prescription substance used to examine, diagnose, or treat disease of the eye and its adnexa.

“Party” has the same meaning as prescribed in A.R.S. §41-1001.

“Plano lenses” means contact lenses that have cosmetic function only.

“Practice management” means the study of management of the affairs of optometric practice.

“Self-instructed media” means educational material in a printed, audio, video, or electronic format.

“Topical diagnostic pharmaceutical agent,” as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to examine and diagnose disease and conditions of the eye and its adnexa.

“Topical therapeutic pharmaceutical agent,” as used in A.R.S. §32-1728, means an externally applied prescription or non-prescription substance used to treat disease of the eye and its adnexa.

“Vision rehabilitation” means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa or develop compensatory approaches. Vision rehabilitation is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision rehabilitation includes, but is not limited to optical, non-optical, electronic, or other assistive treatments.

R4-21-102. Fees and other Charges

A. The Board shall collect the fees established by A.R.S. §32-1727.

B. Under the authority provided at A.R.S. §32-1727, the Board establishes and shall collect the following fees:

1. License issuance fee of \$400, which is prorated from date of issuance to date of renewal;
2. Biennial license renewal fee of \$400; and
3. Late renewal fee of \$200.

- C.** Under the authority provided at A.R.S. §32-1773(B), the Board establishes and shall collect a fee of \$500 for registration or biennial registration renewal as a nonresident dispenser of contact lenses.
- D.** Except as provided in subsection (D)(3), a person requesting a public record shall pay the following for searches and copies of Board records under A.R.S. §39-121.01 or 39-121.03:
1. Noncommercial copy:
 - a. 5¢ per name and address for directory listings or 15¢ each if printed on labels, and
 - b. 25¢ per page for other records;
 2. Commercial copy:
 - a. 25¢ per name and address for directory listings or 35¢ each if printed on labels, and
 - b. 50¢ per page for other records; and
 3. The Board waives the charges listed in subsections (D)(1) and (D)(2) for a government agency.
- E.** The Board establishes and shall collect the following charges for the services specified:
1. Written or certified license verification: \$10; and
 2. Duplicate or replacement renewal receipt: \$10.

R4-21-103. Time-frames for Board Action

- A.** For each type of license, certificate, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.
- B.** For each type of license, certificate, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. §41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.
1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package. Within the time provided in Table 1 for response to a deficiency notice, beginning on the postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
 2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 3. If an application package is not completed with the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.

- C.** For each type of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.
 2. If, under A.R.S. §32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
 3. If the applicant fails to provide the additional information within the time provided to respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.
- D.** An applicant may receive a 40-day extension of the time to respond under subsection (B)(3) or (C)(3) by sending a notice of extension of time to the Board before expiration of the time to respond. The time-frame for the Board to act remains suspended during any extension of time. If the applicant fails to provide the requested information during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.
- E.** Within the overall time-frame listed in the Table 1, the Board shall:
1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
 2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.
- F.** If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to appeal the denial;
 3. The time for appealing the denial; and
 4. The right to request an informal settlement conference.
- G.** In computing any period prescribed in this Section, the day of the act, event, or default after which the designated period begins to run is not included. The period begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date. The last day of the period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the period ends on the next business day.

Table 1. Time-frames (in calendar days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Licensure by examination A.R.S. §32-1722; R4-21-201	75	15	60	60	20
Licensure by endorsement A.R.S. §32-1723; R4-21-202	75	15	75	60	20
Renewal of license A.R.S. § 32-1726; R4-21-205	45	15	20	30	20
Pharmaceutical agents number A.R.S. §32-1728; R4-21-208	75	15	60	60	20
Approval of a continuing education A.R.S. §32-1704(D); R4-21-210	75	15	20	60	20
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. §32-1773; R4-21-213	75	15	20	60	20

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure by Examination

- A.** An individual is eligible to apply for licensure by examination if the individual graduated from an accredited optometry program but is not eligible for licensure by endorsement under R4-21-202(A).
- B.** To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit an application form, which is available from the Board, and provide the following information about the applicant:
1. Full legal name;
 2. Other names ever used, if any, and if applicable, a copy of the court document or marriage license resulting in a name change;
 3. Social Security number;
 4. Mailing address;

5. E-mail address, if any;
6. Residential, business, and mobile telephone numbers;
7. Date and place of birth;
8. Residential addresses for the past five years;
9. Educational background including the name and address of, dates of attendance at, and date of graduation from:
 - a. An accredited optometry program,
 - b. A pre-optometric school or undergraduate educational institution,
 - c. High school, and
 - d. Other post-secondary schools attended;
10. Experience in the practice of the profession of optometry including the business form and location of the practice;
11. Work experience or occupation, other than the practice of the profession of optometry, for the past five years;
12. List of the states in which the applicant is professionally licensed including the name of the state, type of professional license, date issued, and expiration date;
13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;
14. Statement of whether the applicant:
 - a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - b. Has ever been denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;
 - d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;
 - e. Has ever had a disciplinary action instituted against the applicant by any optometric licensing agency and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
 - f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country

and if so, name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;

- g. Has been addicted to narcotic substances or habitually abused alcohol within the last 10 years and if so, date, steps taken to address the addiction or abuse, and current status; and
- h. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct; and

15. Dated and sworn signature of the applicant verifying that the information provided is true to the best of the applicant's knowledge, information, and belief.

C. In addition to submitting the application form required under subsection (B), an applicant shall submit or have submitted on the applicant's behalf:

- 1. A two inch by three inch passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;
- 2. A full set of readable fingerprints taken by a criminal justice agency;
- 3. A cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
- 4. The application fee required under A.R.S. §32-1727;
- 5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination less than ten years before the date of the application;
- 6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;
- 7. An official transcript submitted directly to the Board by the educational institution with an accredited optometry program from which the applicant graduated with a degree in optometry;
- 8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;
- 9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and
- 10. A copy of the front and back of the cardiopulmonary resuscitation card issued to the applicant or other written documentation of current certification in cardiopulmonary resuscitation.

R4-21-202. Licensure by Endorsement

A. An individual is eligible to apply for licensure by endorsement if the individual:

- 1. Graduated from an accredited optometry program;

2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements;
 3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application; and
 4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.
- B.** To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).
- C.** In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:
1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);
 2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:
 - a. Name and title of the individual completing the verification form;
 - b. Number of the applicant's optometry license in the state;
 - c. Date on which the applicant was issued an optometry license by the state;
 - d. A statement of whether the applicant:
 - i. Has been licensed in the state for at least four of the last five years;
 - ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;
 - iii. Is currently in good standing in the state;
 - iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;
 - v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and
 - vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint; and
 - e. The dated, notarized signature of the individual completing the verification form; and
 3. A letter on official letterhead, in substantially the form provided by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207.

R4-21-203. Jurisprudence Examination

- A.** To be licensed, an applicant shall obtain a score of at least 75% on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to optometry.
- B.** An applicant may take the jurisprudence examination at any time after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).
- C.** An applicant who fails the jurisprudence examination may retake the examination one time within six months from the date of the original examination.
- D.** The Board shall further consider an applicant who fails the jurisprudence examination a second time only if the applicant:
 - 1. Waits at least six months from the date of the second taking of the jurisprudence examination;
 - 2. Submits a new application form under R4-21-201(B) or R4-21-202(B);
 - 3. Submits a full set of readable fingerprints taken by a criminal justice agency and a cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
 - 4. Submits a two inch by three inch passport-quality photograph of the applicant's head and shoulders that is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side;
 - 5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application; and
 - 6. Submits the application fee required under A.R.S. §32-1727.

R4-21-204. License Issuance

- A.** When the Board determines that an applicant meets all of the substantive criteria required by statute and this Chapter, the Board shall send the applicant a written notice informing the applicant that the Board shall issue the applicant a license when the applicant pays the license issuance fee required under R4-21-102(B).
- B.** Under A.R.S. §32-1725, if an applicant fails to pay the license issuance fee within 60 days after receiving notice under subsection (A), the Board considers the application withdrawn. An individual whose application is withdrawn can be further considered for licensing only by complying with R4-21-201 or R4-21-202.

R4-21-205. License Renewal

- A.** To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a

licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.

B. To renew a license and, if applicable, certificate of special qualification, a licensee shall submit to the Board a license renewal application and provide the following information:

1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;
2. The licensee's current mailing address and telephone and fax numbers;
3. The licensee's current residential address, e-mail address, and residential and mobile telephone numbers;
4. The licensee's current permanent and temporary practice addresses and telephone and fax numbers;
5. A statement of whether the licensee:
 - a. Has practiced the profession of optometry within the last two years;
 - b. Has been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - c. Has been denied an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;
 - d. Has had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;
 - e. Has had disciplinary action instituted against the licensee by any optometric regulatory agency within the preceding two years and if so, the name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
 - f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the state or jurisdiction, date, reason for the investigation, and current status;
 - g. Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, the name of the jurisdiction, date, offense charged, offense for which convicted, pled guilty, or no contest, and current status;
 - h. Has been addicted to narcotic substances or habitually abused alcohol within the preceding two years and if so date, steps taken to address the addiction or abuse, and current status;
 - i. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct;

- j. Has had the authority to prescribe, dispense, or administer pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of action taken, date, reason for action, and current status; and
 - k. Is in compliance with the provisions of A.R.S. §32-3211;
6. The following information about each approved continuing education attended by the licensee during the preceding two years:
- a. Name of continuing education provider,
 - b. Title,
 - c. Date of attendance, and
 - d. Number of hours of attendance; and
7. The licensee's dated signature affirming that the information provided is true and correct.
- C.** In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:
- 1. The license renewal fee listed at R4-21-102(B); and
 - 2. The certificate of special qualification fee required under A.R.S. §32-1727 if the licensee has a certificate of special qualification; or
 - 3. Written documentation that the licensee is currently certified in cardiopulmonary resuscitation if the licensee has a pharmaceutical agents number.
- D.** A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).
- E.** A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.
- F.** If a licensee timely applies for license renewal or complies with subsection (D), the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

R4-21-206. License Reinstatement; Application for Licensure following License Expiration

- A. Reinstatement following license expiration. If an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:

1. Submit the renewal form described in R4-21-205(B);
 2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
 3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. §32-1727 for each biennial period that the license was not renewed;
 4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;
 5. Submit a \$50 penalty fee for each year or portion of a year that the license was not renewed; and
 6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical agents number.
- B. Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall submit evidence of completing all terms of suspension imposed by the Board.
- C. Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:
1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or
 2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

R4-21-207. Course of Study Approval

The Board approves a course of study that:

1. Includes didactic and clinical training in:
 - a. Examining, diagnosing, and treating conditions of the human eye and its adnexa; and
 - b. Prescribing dispensing, and administering pharmaceutical agents;
2. Includes at least 120 hours of training, at least 12 of which address prescribing, dispensing, and administering oral pharmaceutical agents; and
3. Is provided by an educational institution with an accredited optometry program.

R4-21-208. Certificate of Special Qualification; Pharmaceutical Agent Number

- A. The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:
1. Was licensed by the Board before July 1, 2000;

2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and
 3. Pays the fee prescribed at A.R.S. §32-1727.
- B.** The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:
1. Was licensed by the Board before July 1, 2000,
 2. Did not hold a certificate of special qualification issued by the Board before July 1, 2000, and
 3. Pays the fee prescribed at A.R.S. § 32-1727.
- C.** A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:
1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:
 - a. Name of licensee;
 - b. Social Security number;
 - c. Mailing address;
 - d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);
 - e. License number;
 - f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;
 - g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;
 - h. Residential address;
 - i. Telephone and fax numbers at the address listed under subsection (C)(1)(h);
 - j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and
 - k. Applicant's dated signature affirming that the information provided is true and correct; and
 2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and
 3. Submit written documentation that the licensee is currently certified in cardiopulmonary resuscitation.
- D.** The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the

licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

R4-21-209. Continuing Education Requirement

- A.** A licensee shall complete 32 hours of approved continuing education during each biennial license renewal period. The licensee shall ensure that in each biennial license renewal period:
1. At least four hours of the approved continuing education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;
 2. No more than 12 hours of the approved continuing education are obtained through self-instructed media;
 3. No more than four hours of the approved continuing education are in the area of practice management;
 4. No more than one hour of approved continuing education is claimed for each day of instruction in a course of study approved under R4-21-207 to a maximum of four hours; and
 5. No more than four hours of approved continuing education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.
- B.** If a licensee obtains more than 32 hours of approved continuing education during a biennial renewal period, the licensee shall not claim the extra hours of approved continuing education during a subsequent biennial renewal period.
- C.** During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved continuing education for each month remaining in the biennial renewal period.
- D.** A licensee shall not claim as approved continuing education any educational program or course completed before being licensed.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved continuing education attended that includes the following:
1. Name of the licensee,
 2. License number of the licensee,
 3. Name of the approved continuing education,
 4. Name of the continuing education provider,
 5. Date, time, and location of the approved continuing education, and
 6. Number of hours of approved continuing education and number of hours relating to practice management.
- F.** A licensee shall maintain the certificates or other evidence of attendance described in subsection (E) for three years from the date of attendance.

G. A licensee shall submit to the Board a copy of the certificates or other evidence of attendance obtained during a biennial renewal period if subject to an audit by the Board under R4-21-211.

R4-21-210. Approval of Continuing Education

A. The Board approves the following as continuing education:

1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and
2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry and:
 - a. Provided by an educational institution with an accredited optometry program; or
 - b. Sponsored or approved by the Association of Schools and Colleges of Optometry, Council on Optometric Practitioner Education, or a local, regional, or national optometric association.

B. To obtain approval of a continuing education that is not approved under subsection (A), the provider of the continuing education or a licensee shall, before providing or participating in the continuing education:

1. Submit an application for approval, using a form that is available from the Board, and provide the following information:
 - a. Name of applicant,
 - b. Address and telephone number of applicant,
 - c. Provider of the continuing education,
 - d. Name and telephone number of a contact person with the continuing education provider,
 - e. Name of the continuing education,
 - f. Date and location of the continuing education,
 - g. Manner in which potential participants will be notified that the continuing education is available,
 - h. Number of hours of the continuing education and the number of hours that relate to practice management,
 - i. Name of instructor of the continuing education, and
 - j. Dated signature of the applicant;
2. Submit a curriculum vitae for the instructor of the continuing education; and
3. Submit a syllabus of the continuing education that identifies learning objectives, teaching methods, and content.

C. The provider of an approved continuing education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).

D. The Board shall approve a continuing education if the application required under subsection (B) is submitted and the Board determines that the continuing education is designed to provide understanding of

current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry.

R4-21-211. Audit of Compliance with Continuing Education Requirement

At the time of license renewal, the Board shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R4-21-205.

R4-21-212. Waiver of or Extension of Time to Complete Continuing Education Requirement

- A.** To obtain a waiver of some or all of the hours of approved continuing education required during a biennial renewal period, a licensee shall submit a written request to the Board that:
1. Specifies the number of hours of approved continuing education that the licensee requests the Board to waive; and
 2. Documents that the licensee suffered a serious or disabling illness or other good cause that prevented the licensee from complying with the continuing education requirement.
- B.** The Board shall grant a waiver within seven days after receiving the request if the Board determines that the licensee demonstrated good cause.
- C.** To obtain an extension of time to complete the continuing education requirement, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
 2. Continuing education completed during the biennial renewal period and the documentation required under R4-21-209(E),
 3. Proof of registration for additional approved continuing education that is sufficient to enable the licensee to fulfill the continuing education requirement before the end of the requested extension, and
 4. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent license renewal application.
- D.** The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
1. Specifies an ending date no later than four months after the date of license expiration, and
 2. Includes the required documentation and attestation.

R4-21-213. Registration of Nonresident Contact-lens Dispenser; Renewal

- A.** To register with the Board as a nonresident dispenser of replacement soft contact lenses, a person shall maintain a valid license to conduct the business of a pharmacist or pharmacy in the state in which the person is domiciled.
- B.** To register with the Board, a nonresident contact-lens dispenser that is qualified under subsection (A) shall submit to the Board:
1. An application, using a form that is available from the Board, that provides the following information:
 - a. Name of applicant;
 - b. Social Security number;
 - c. Date of applicant's birth;
 - d. Mailing address;
 - e. Telephone and fax numbers at the address listed under subsection (B)(1)(d);
 - f. State in which the applicant is licensed as a pharmacist or pharmacy;
 - g. Number of pharmacist or pharmacy license;
 - h. Whether license held is for a pharmacist or pharmacy;
 - i. Taxpayer identification number;
 - j. Primary business name;
 - k. Address of business location at which inventory and records are stored;
 - l. Telephone and fax numbers at the address listed under subsection (B)(1)(k);
 - m. Toll-free telephone number for use by Arizona customers; and
 - n. Applicant's dated signature affirming that the information provided is true and correct;
 2. The names of all corporate officers and of all general partners, if any;
 3. The fee listed at R4-21-102(C); and
 4. A certified copy of the license referenced in subsection (B)(1)(g).
- C.** Registration as a nonresident contact-lens dispenser is valid for two years from the date issued. To renew registration, a registered nonresident contact-lens dispenser shall comply with subsection (B) before the registration expires.

ARTICLE 3. STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

R4-21-301. Display of License; Surrender of License

- A.** License display. A licensee shall display the Board-issued license at each location at which the licensee practices the profession of optometry and in a manner that makes the license visible to the public.

- B.** License surrender. Upon order by the Board, a licensee shall surrender to the Board all copies of the license and, if applicable, certificate of special qualification issued to the licensee.

R4-21-302. Advertising

- A.** A licensee shall not knowingly make, publish, or use an advertisement that contains a false, fraudulent, deceptive, or misleading representation.
- B.** A licensee may advertise that the licensee has a practice limited in some way if the licensee does not use the term “specialist” or any derivative of the term "specialist."
- C.** A licensee shall ensure that the content of an advertisement or directory that includes the name and address of the licensee is accurate.

R4-21-303. Affirmative Disclosures Required

- A.** A licensee shall ensure that an advertisement for or by the licensee clearly indicates within the advertisement:
1. Whether spectacle lenses or contact lenses advertised are single vision, multi-focal, or other;
 2. Whether the price advertised for spectacles includes both the frame and lenses;
 3. Whether the price advertised includes an eye examination;
 4. Whether the price advertised for contact lenses includes all dispensing fees, follow-up care, and a contact lens accessory kit; and, if an accessory kit is included, the specific features of the kit;
 5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
 6. The refund policy if refunds are advertised; and
 7. A statement that other restrictions apply if there are other restrictions.
- B.** A licensee shall inform a patient of all professional fees before providing treatment.
- C.** A licensee who refers a patient to a facility in which the licensee or a member of the licensee’s family has an ownership or employment interest shall advise the patient of the interest at the time of referral.
- D.** A licensee who charges a patient a fee for a warranty or a service or ophthalmic-goods-replacement agreement, shall:
1. Give the patient a written copy of the warranty or service or ophthalmic-goods-replacement agreement;
 2. Ensure that the warranty or service or ophthalmic-goods-replacement agreement explains the coverage included and any limitation;
 3. Document compliance with subsection (D)(1) by making a written entry on the patient’s record; and
 4. Place a copy of the warranty or service or ophthalmic-goods-replacement agreement, signed by the patient, in the patient’s record.

R4-21-304. Vision Examination Standards

A licensee shall conduct an eye examination in accordance with the standards of care prevalent in the community and consistent with current industry practice.

R4-21-305. Recordkeeping

- A.** A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a patient record is maintained for at least six years after the licensee's last contact with the patient and includes:
1. Patient's name and contact information;
 2. Date on which an entry is made in the patient's record;
 3. Identification of the person making the entry in the patient's record;
 4. Complete health history;
 5. Visual acuity of each eye: entering and best corrected;
 6. Ocular health examination;
 7. Assessment of intraocular and extra-ocular muscle function;
 8. Objective or subjective refraction of the eyes;
 9. Diagnosis, treatment, and disposition;
 10. Type and dosage of each use of a pharmaceutical agent;
 11. Final optometric prescription given, if any;
 12. Corrective procedure program prescribed, if any; and
 13. Signature of licensee providing diagnosis, treatment, and disposition.
- B.** A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.
- C.** A licensee who discontinues practice for any reason shall arrange for a patient's record to be available to the patient for six years from the date the licensee discontinues practice. Before discontinuing practice, a licensee shall notify the Board of the location at which patient records from the practice will be maintained.
- D.** A licensee who acquires the patient records of a licensee who discontinued practice, either with or without succeeding to the practice of the other licensee, shall ensure that the records are available to the patients for six years after the licensee from whom the records were acquired discontinued practice.
- E.** A licensee shall provide a tangible or electronic copy of a patient's record within five business days after receiving a written request from the patient. The licensee shall provide the copy to any person designated by

the patient. The licensee may charge a fee to cover the costs of providing the copy. The licensee shall maintain a record of providing the copy for six years.

- F.** Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all law regarding security, confidentiality, and release of the records.

R4-21-306. Optometric Prescription Standards; Release to Patients

- A.** When a licensee completes an eye examination and generates an optometric prescription, the licensee shall provide the patient with a copy of the optometric prescription without charging a fee other than the examination fee.
- B.** A licensee shall ensure that an optometric prescription written by the licensee includes:
1. For ophthalmic lenses other than contact lenses:
 - a. Name of the patient;
 - b. Refractive power of the lenses;
 - c. Interpupillary distance;
 - d. Printed name, office address, telephone number, and signature of the licensee; and
 - e. Date of the examination and expiration date of the prescription;
 2. For contact lenses, including plano lenses:
 - a. Name of the patient;
 - b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase trial lenses at another optical establishment or location;
 - c. For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to reproduce the contact lenses accurately;
 - d. Printed name, office address, telephone number, license number, and signature of the licensee;
 - e. Date of the examination and the issue and expiration date of the prescription; and
 - f. Information regarding the prescribed contact lenses:
 - i. Refractive power;
 - ii. Base curve or other appropriate designation;
 - iii. Diameter, if appropriate;
 - iv. Tint, if applicable;
 - v. Material, manufacturer, or both; and
 - vi. In the case of private-label contact lenses, manufacturer, trade name, and, if applicable, trade name of equivalent brand name; and

3. For pharmaceutical agents:
 - a. Name and address of the patient;
 - b. Date the prescription is issued;
 - c. Name, strength, and quantity of the pharmaceutical agent prescribed;
 - d. Directions for use of the pharmaceutical agent prescribed;
 - e. Name, office address, and telephone number of the prescribing licensee;
 - f. DEA number of the prescribing licensee;
 - g. Two adjacent signature lines with the following printed words:
 - i. "Dispense as written" under the left signature line, and
 - ii. "Substitution permissible" under the right signature line; and
 - h. Original signature of the prescribing licensee on one of the signature lines; and
4. Additional information that the licensee considers necessary.

C. A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.

D. A licensee shall be available to verify that a prescription written by the licensee but filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for verifying the accuracy or quality of ophthalmic goods dispensed by another provider.

R4-21-307. Vision Rehabilitation

A. A licensee may use any objective or subjective method other than surgery to diagnose or treat any visual, muscular, neurological, or anatomical anomaly of the eye.

B. A licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye.

R4-21-308. Anaphylactic-related Supplies

A. If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. § 32-1706(E), use an epinephrine auto-injector to counteract the anaphylactic reaction.

B. A licensee who maintains epinephrine auto-injectors at the licensee's practice location shall also maintain the following medically necessary supportive equipment and supplies:

1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;
2. Syringes for injecting diphenhydramine;
3. Wristwatch with a second hand;
4. Sphygmomanometer with both adult and extra-large cuffs;

5. Stethoscope;
6. Adult-size pocket mask with one-way valve;
7. Tongue depressors; and
8. Telephone.

R4-21-309. Rehearing or Review of Board Decision

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or the administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or in the course of the proceedings; and
 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the

Board for a maximum of 20 days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.

- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing or review.

ARTICLE 5. REPEALED

R4-21-501. Repealed

R4-21-502. Repealed

R4-21-503. Repealed

R4-21-504. Repealed

OTHER RELATED STATUTES:

32-3201. Definitions

In this chapter, unless the context otherwise requires:

1. "Health profession regulatory board" means any board that regulates one or more health professionals in this state.
2. "Health professional" means a person who is certified or licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39 or 41 of this title, title 36, chapter 6, article 7 or title 36, chapter 17.

32-3202. License or certificate suspension

The certificate or license of a health professional who does not renew the certificate or license as prescribed by statute and who has been advised in writing that an investigation is pending at the time the certificate or license is due to expire or terminate does not expire or terminate until the investigation is resolved. The license is suspended on the date it would otherwise expire or terminate and the health professional shall not practice in this state until the investigation is resolved. The certificate is suspended on the date it would otherwise expire or terminate and the health professional shall not practice as a certified health professional in this state until the investigation is resolved.

32-3203. Malpractice claim investigation

On receipt of a malpractice report and a copy of a malpractice complaint as provided in section 12-570, the health profession regulatory board shall initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

32-3204. Experimental diagnosis, therapy or treatment; implied consent; definition

- A. Notwithstanding any provision of this title to the contrary, a health professional, within the scope of that person's profession, may use an experimental diagnosis, therapy or treatment on a patient who is unable

to make or communicate health care decisions and who has an emergent life threatening condition if the requirements of 21 Code of Federal Regulations parts 50, 56, 312, 314, 601, 812 and 814 have been met.

- B. A health professional who performs an experimental diagnosis, therapy or treatment pursuant to this section is deemed to have obtained the patient's implied consent for the purposes of title 12, chapter 5.1, article 1.
- C. For purposes of this section, "experimental diagnosis" means the pharmaceuticals, devices and technology used to diagnose patients.

32-3205. Board disciplinary action; voting requirements

If a disciplinary action requires a vote of board members, a health profession regulatory board shall conduct that vote by roll call. The board shall maintain a record of each member's vote. This section does not prohibit a board from using a consent agenda.

32-3206 Disciplinary action; information; disclosure

- A. At least ten business days before a disciplinary interview or a hearing, if the board does not hold a disciplinary interview, the health profession regulatory board shall notify the health professional and, at that person's request, the board shall provide the health professional or the health professional's attorney with the information listed in this section. The Board shall provide the following information:
 - 1. Any review conducted by an expert or consultant providing an evaluation or opinion on the allegations.
 - 2. Any records on the patient obtained by the board from other health care providers.
 - 3. The results of any evaluations or tests of the health professional conducted at the board's direction.
 - 4. Any other factual information that the board will use in making its determination.
- B. A person who obtains information from the board pursuant to this section may not release it to any other person or entity or use it in any proceeding or action except the disciplinary interview and any administrative proceedings or appeal related to the disciplinary interview. A person who violates this subsection commits an act of unprofessional conduct.
- C. The board may charge the health professional or the health professional's attorney for the cost of providing the information received up to the fee for making a copy of each page as prescribed by section 12-284, subsection A.

32-3208. Criminal charges; mandatory reporting requirements; civil penalty

- A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.
- B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.
- C. On receipt of this information the regulatory board may conduct an investigation.

- D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than one thousand dollars in addition to other disciplinary action it takes.
- E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.
- F. On request a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

32-3209. Release of information; fees

- A. On request of any person, a health profession regulatory board must provide the following information to that person:
 - 1. A copy of the minutes of any specified board meeting.
 - 2. A copy of a board action concerning a person regulated by the board.
 - 3. A copy of the final adjudication of a complaint against a person regulated by the board. For the purposes of this paragraph, final adjudication of a complaint does not include any complaint that was dismissed or terminated more than five years before the request was submitted.
 - 4. The name and primary practice address of a person regulated by the board.
- B. A health regulatory board may charge a fee for copies of any of the information in subsection A.

32-3211. Medical records; protocol; unprofessional conduct; corrective action; exemptions

- A. A health professional must prepare a written protocol for the secure storage, transfer and access of the medical records of the health professional's patients. At a minimum the protocol must specify:
 - 1. If the health professional terminates or sells the health professional's practice and the patient's medical records will not remain in the same physical location, the procedure by which the health professional shall notify each patient in a timely manner before the health professional terminates or sells the health professional's practice in order to inform the patient regarding the future location of the patient's medical records and how the patient can access those records.
 - 2. The procedure by which the health professional may dispose of unclaimed medical records after a specified period of time and after the health professional has made good faith efforts to contact the patient.
 - 3. How the health professional shall timely respond to requests from patients for copies of their medical records or to access their medical records.
- B. The protocol prescribed in subsection A of this section must comply with the relevant requirements of title 12, chapter 13, article 7.1 regarding medical records.

- C. A health professional shall indicate compliance with the requirements of this section on the health professional's application for relicensure in a manner prescribed by the health professional's regulatory board.
- D. A health professional who does not comply with this section commits an act of unprofessional conduct.
- E. In addition to taking disciplinary action against a health professional who does not comply with this section, the health professional's regulatory board may take corrective action regarding the proper storage, transfer and access of the medical records of the health professional's patients. For the purposes of this subsection, corrective action does not include taking possession or management of the medical records.
- F. For the purposes of this section, health professional does not include a veterinarian.
- G. This section does not apply to a health professional who is employed by a health care institution as defined in section 36-401 that is responsible for the maintenance of the medical records.

32-3213. Health professionals; disclosure; unprofessional conduct; definition

- A. An advertisement for health care services that includes a health professional's name shall identify the title and type of license the health professional holds and under which the health professional is practicing.
- B. A health professional who violates this section commits an act of unprofessional conduct.
- C. For the purposes of this section, "advertisement" includes billboards, brochures, pamphlets, radio and television scripts, electronic media, printed telephone directories, telephone and direct mail solicitations and any other means of promotion intended to directly or indirectly induce any person to enter into an agreement for services with the health professional. Advertisement does not include materials that provide information about network providers and that are created by an entity regulated under title 20.

32-3801. Personal information maintained by professional boards; confidentiality

Notwithstanding any law to the contrary, a professional's residential address and residential telephone number or numbers maintained by a professional board established pursuant to this title are not available to the public unless they are the only address and numbers of record.

35-143.01. Special funds; appropriation; reversion; use

- A. All monies deposited in special agency funds of self-supporting regulatory agencies, as provided in section 35-142, to be used by such agency for administration and enforcement, shall be subject to annual legislative appropriation.
- B. Unless otherwise provided by the legislature, a special fund self-supporting regulatory agency shall not expend more monies than are appropriated by the legislature for a fiscal year, and any monies remaining at the end of the fiscal year revert to the special agency fund.

- C. Any unexpended or unencumbered balance of monies remaining in the special funds of self-supporting regulatory agencies as provided in section 35-142 at the end of the fiscal year shall not revert to the state general fund and may be made available by the legislature for use by the agency for the following fiscal year.

12-2291. Definitions

In this article, unless the context otherwise requires:

1. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.
2. "Health care decision maker" means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor or an individual who is authorized pursuant to title 14, chapter 5, article 2 or 3 or section 36-3221 or 36-3231.
3. "Health care provider" means:
 - (a) A person licensed pursuant to title 32 who maintains medical records.
 - (b) A health care institution as defined in section 36-401.
 - (c) An ambulance service as defined in section 36-2201.
 - (d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.
4. "Medical records" means all communications that are recorded in any form or medium and that are maintained for purposes of patient treatment, including reports, notes and orders, test results, diagnoses, treatments, photographs, videotapes, X rays, billing records and the results of independent medical examinations that describe patient care. Medical records include psychological records and all medical records held by a health care provider, including medical records that are prepared by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445 or 36-2402. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but shall include communications between emergency medical personnel and medical personnel concerning the treatment of a person.

12-2292. Confidentiality of medical records

- A. Unless otherwise provided by law, all medical records and the information contained in medical records are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical record that is authorized pursuant to law or the patient's written authorization.
- B. If necessary for its own business operations or in response to a request for a copy of the patient's medical record, a health care provider may release a patient's medical record to a contractor for the purpose of duplicating or disclosing the record on behalf of a health care provider. A contractor shall not disclose any part or all of a patient's medical record in its custody except as provided in this article. After duplicating or disclosing a patient's medical record on behalf of a health care provider, a contractor shall return the record to the health care provider who released the medical record to the contractor.
- C. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records.

12-2293. Release of medical records to patients and health care decision makers

- A. On the written request of a patient for access to or copies of the patient's medical records, the health care provider in possession of the record shall provide the medical records to the patient or the person designated in writing by the patient unless the attending physician or psychologist determines and notifies the health care provider in possession of the record that the patient's access to the patient's medical record is contraindicated due to treatment of the patient for a mental disorder as defined in section 36-501. Psychologists are exempt from making available raw test data and psychometric testing materials. If the attending physician or psychologist determines that the patient should not have access to the patient's medical records, the physician or psychologist shall note this determination in the patient's medical record.
- B. On written request of a patient's health care decision maker for access to or copies of the patient's medical records, the medical records shall be provided to the health care decision maker or the person designated in writing by the health care decision maker unless the access is limited by the patient.
- C. Records that are not in written form shall be released only if the patient or patient's health care decision maker specifically requests and identifies in writing the type of record desired.
- D. Notwithstanding subsection A of this section, if the patient receives treatment for a mental disorder as defined in section 36-501, on written request of a health care decision maker for access to or copies of the patient's medical records, the health care provider may refuse to provide records which indicate confidential information between the patient and the health care professional. If the attending physician determines that the health care decision maker should not have access to that part of the patient's medical record, the attending physician shall note this determination in the patient's medical record and shall provide to the health care decision maker a written explanation of the reason for such denial. The health care provider shall release medical record information to the health care decision maker, which includes the patient's therapy treatment plan, and medication information.

12-2294. Release of medical records to third parties

- A. A health care provider shall disclose medical records or the information contained in medical records without the patient's written authorization as otherwise required by law.
- B. A health care provider may disclose medical records or the information contained in medical records without the patient's written authorization as follows or as otherwise authorized by law:
 - 1. To attending and consulting health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.
 - 2. To health care providers who have previously provided treatment to the patient, to the extent that the records pertain to the provided treatment.
 - 3. To ambulance attendants as defined in section 36-2201 for the purpose of providing care to or transferring the patient whose records are requested.
 - 4. To a private agency that accredits health care providers and to the Arizona medical board.
 - 5. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

6. To a person or entity that provides billing, claims management, medical data processing, utilization review or other administrative services to the patient's health care providers.
 7. To the legal representative of a health care provider in possession of the medical record for the purpose of securing legal advice.
 8. To the personal representative or administrator of the estate of a deceased patient. If a personal representative or administrator has not been appointed, a health care provider may release medical records to the following persons and in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that he opposes the release of the medical records:
 - (a) The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.
 - (b) The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.
 - (c) An adult child of the deceased patient.
 - (d) A parent of the deceased patient.
 - (e) An adult brother or sister of the deceased patient.
 - (f) A guardian or conservator of the deceased patient at the time of the patient's death.
 9. To the patient's third party payor if the payor has separately obtained the patient's written authorization to disclose medical record information to the payor and furnishes a copy of this authorization to the health care provider.
- C. In addition to the persons listed in subsection B, paragraph 8 of this section, a health care provider may release medical records or the information contained in medical records to the patient's health care decision maker at the time of the patient's death.
- D. A health care provider shall disclose medical records to persons listed in subsection B, paragraphs 2, 4, 5 and 8 of this section only on written request. The person requesting the records shall sign the request and shall demonstrate the authority to have access to the records.
- E. Medical records that are not in written form shall only be released if the written request specifically identifies the type of record desired.
- F. Medical records that are disclosed pursuant to this section remain privileged. A person who receives medical records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient's health care decision maker, unless otherwise provided by law.

12-2295. Charges

- A. Except as otherwise provided by law, a health care provider or contractor may charge a person who requests copies of medical records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.
- B. A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:
 - 1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.
 - 2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.
 - 3. The health care decision maker or surrogate of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.
 - 4. The Arizona medical board or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

12-2296. Immunity

A health care provider or contractor that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records or payment records or information contained in medical records or payment records that is made pursuant to this article or as otherwise provided by law. The health care provider or contractor is presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.

12-2297. Retention of records

- A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient's medical records as follows:
 - 1. If the patient is an adult, for at least six years after the last date the adult patient received medical or health care services from that provider.
 - 2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.
 - 3. Source data may be maintained separately from the medical record and must be retained for six years from the date of collection of the source data.
- B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.

- C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.
- D. A nursing care institution as defined in section 36-401 shall retain patient records for six years after the date of the patient's discharge. For a minor, the nursing care institution shall retain the records for three years after the patient reaches eighteen years of age or for six years after the date of the patient's discharge, whichever date occurs last.

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

- A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, Christian science practitioner or priest who has received a confidential communication or a confession in that person's role as a member of the clergy, Christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, Christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, Christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations, the member of the clergy, Christian Science practitioner or priest may otherwise make of the minor. For the purposes of this subsection, "person" means:
 - 1. Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
 - 2. Any peace officer, member of the clergy, priest or Christian Science practitioner.
 - 3. The parent, stepparent or guardian of the minor.
 - 4. School personnel or domestic violence victim advocate who develops the reasonable belief in the course of their employment.
 - 5. Any other person who has responsibility for the care or treatment of the minor.
- B. A report is not required under this section for conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.
- C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state

department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

- D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:
1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
 2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
 3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.
- E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the department of economic security. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.
- F. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.
- G. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.
- H. When telephone or in-person reports are received by a peace officer, the officer shall immediately notify child protective services in the department of economic security and make the information available to them. Notwithstanding any other statute, when child protective services receive these reports by telephone or in person, it shall immediately notify a peace officer in the appropriate jurisdiction.
- I. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.
- J. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or

criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

- K. Except for the attorney client privilege or the privilege under subsection L of this section, no privilege applies to any:
1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.
 2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.
 3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or child protective services in the department of economic security.
- L. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a Christian science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a Christian science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. Nothing in this subsection discharges a member of the clergy, a Christian Science practitioner or a priest from the duty to report pursuant to subsection A of this section.
- M. If psychiatric records are requested pursuant to subsection G of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
1. Personal information about individuals other than the patient.
 2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
- N. If any portion of a psychiatric record is excised pursuant to subsection M of this section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer or child protective services worker investigating the abuse, child abuse, physical injury or neglect.
- O. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.
- P. For the purposes of this section:
1. "Abuse" has the same meaning prescribed in section 8-201.
 2. "Child abuse" means child abuse pursuant to section 13-3623.
 3. "Neglect" has the same meaning prescribed in section 8-201.
 4. "Reportable offense" means any of the following:
 - (a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.01.

- (b) Surreptitious photographing, videotaping, filming or digitally recording of a minor pursuant to section 13-3019.
- (c) Child prostitution pursuant to section 13-3212.
- (d) Incest pursuant to section 13-3608.

41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.
2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.
3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.
4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.
5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
 - (a) Providing written or oral comments on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection C.
 - (b) Providing written or oral comments on rules to the governor's regulatory review council as provided in article 5 of this chapter.
7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.
8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.
9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

10. May file a complaint with the administrative rules oversight committee concerning:
 - (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.
 - (b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.
 11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.
 12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.
 13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.
 14. Is entitled to receive written notice from an agency on denial of a license application:
 - (a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.
 - (b) That explains the applicant's right to appeal the denial as provided in section 41-1076.
 15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.
 16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.
 17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.
 18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.
 19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.
- B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

41-1010. Complaints; public record

Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule. During the course of an investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to the public health or safety.

41-3013.08. Optometry board; termination July 1, 2013

- A. The state board of optometry terminates on July 1, 2013.
- B. Title 32, chapter 16 is repealed on January 1, 2014.